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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,937	01/31/2001	Koichiro Yamashita	1503.65173	6180

24978	7590	07/19/2005

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EXAMINER
BULLOCK JR, LEWIS ALEXANDER

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/774,937	YAMASHITA, KOICHIRO
	Examiner	**Art Unit**	
	Lewis A. Bullock, Jr.	2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>30 June 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-5,8,9,11,14 and 16*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
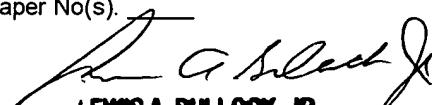
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER

U.S. Patent and Trademark Office

PTOL-303 (Rev. 4-05)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 20050718

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are unpersuasive. Applicant argued that the teachings of Wheat and Silva do not teach or allude to the hierarchical process as disclosed in the claims. The examiner disagrees. Hiearchy is defined as the type of organization that, like a tree, branches into more specific units, each of which is owned by the higher level unit. The specification does not make any reference that the hierarchy are layered above or below one another as detailed in the separate teachings of each of four hierarchies (See pg. 13, line 9 - pg 13, line 7 and figs 4-16). There only exists a functional relationship between the four hierarchies in that the first hierarchy must occur before the second hierarchy, the second hierarchy before the third hierarchy, and so on. In essence, there only exist a functional relationship between the various hierarchies. Wheat teaches the dynamic load balancing of an application to a plurality of processors on a parallel system that performs dynamic rescheduling of tasks, i.e. data cells, of the application among the processors by assigning a data cell to the processors, dynamic scheduling when a data cell is entered into a processor element and dynamic scheduling of a data cell currently being executed on a processor element based on the load (col. 2, lines 17-33; col. 2, lines 45-47; col. 5, lines 51-67; col. 13, lines 29-51). However, Wheat does not teach that the assigning of the data cells are first stored in a queue and then assigned from the queue to the processors. Silva teaches that a tasks of a job to be executed on a parallel machine are first sent and stored on a job queue and then the jobs are taken from the queue based on their priority and scheduled on the processors for execution (pgs. 2-4). The task that are executed are dynamically rescheduled after the reception of the global clock signal , a task block, a job arrival, a job termination, would generate a workload change to reschedule the task that are executing or could execute. Therefore, Silva teaches how the tasks are initially assigned to a processor through a queue to a system of Wheat which only discloses assigning a data cell to a processor and dynamically rescheduling based on subsequent scheduling operations as disclosed by Wheat. Hence, the combination teaches the limitations of the claims such that the claims have a functional hierarchy wherein one scheduling function leads to another scheduling function and so on. Therefore, the combination meets the limitations of the claims as disclosed. Applicant then argues that the motivation for the combination of the references is from the Examiners own personal opinion and therefore the combination is inadequate because the motivation must come from the references themselves. The examiner disagrees. As stated in the rejection, the motivation did come from the references. Both references teaches the scheduling of a paralell job (application) having a plurality of tasks (data cells) to a plurality of processors. Hence the references are analogous art. Secondly, Silva's abstract states the very reasoning that the examiner referred to. wherein Concurrent Gang scheduling allows for the flexible simultaneous scheduling of multiple parallel jobs with different characteristics. Therefore, Applicant argument is moot since Applicant states that the motivation must come from the references and the current motiviation does come from the references. Therefore, the rejection is maintained .